VIA EMAIL AND FIRST CLASS MAIL

July 9, 2009
Superintendent Joseph Higgs, Jr.
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Dear Superintendent Higgs:

We write based on concerns brought to our attention by Anna Williams, whose son was detained at the Rappahannock Regional Jail (the "Jail"). Ms. Williams, a devout Christian, wanted to support her son spiritually during his confinement at the Jail by sending him religious language, including passages from the Bible.

Rather than delivering these letters to Ms. Williams' son, the Jail expurgated the religious material, citing variously as the reason for censorship "Internet Pages" and "Religious Material from Home." Such censorship destroyed the religious messages Ms. Williams sought to convey to her son and reduced her letters to something resembling Swiss cheese. Using scissors or a hobby knife, Jail officials literally cut the religious portions out of Ms. Williams' letters and delivered only the snippets that did not quote the Bible. For example, because the Jail excised Biblical passages, all Ms. Williams' son received of a three page letter was the salutation, the first paragraph of the letter, and the closing, "Love, Mom."

The Jail censored any number of Biblical passages in Ms. Williams' letters, banning passages from the Book of Proverbs, the Book of James, and the Book of Matthew, among many others. The Jail also refused to deliver an article entitled *Coping with Loneliness*, a Christian guide that Ms. Williams hoped would help her son confront his isolation at the Jail.[1]

It is astonishing that such censorship of the Bible and other religious material could occur in an American jail in the Twenty-First Century. Even the novelist Fyodor Dostoevsky had ready access to scripture while incarcerated in a Siberian prison camp in tsarist Russia,[2] and on our shores, "[t]here is no iron curtain drawn between the Constitution and the prisons of this

[1] The Jail placed the expurgated portions of the letters in the "personal property" of Ms. Williams' son, meaning they were not given to him until he was transferred out of the Jail.

[2] *Thornburgh v. Abbott*, 490 U.S. 401, 417 n.15 (1989) (citing F. Dostoyevsky, The House of the Dead 40 (Penguin 1985)).

country."[3] Even after "the prison gates slam behind an inmate," the Constitution protects "those precious personal rights by which we satisfy [the] basic yearnings of the human spirit."[4]

Prohibiting Ms. Williams from sending scripture to her son prevents such "basic yearnings of the human spirit" from being realized and violates the First Amendment to the United States Constitution, which protects free speech and the free exercise of religion.[5] Jails may limit detainees' right to free speech and free exercise only through restrictions "reasonably related to legitimate penological interests," such as jail security.[6] Bible verses do not jeopardize security, and there is no legitimate penological interest in censoring them. Indeed, federal courts have struck down bans on a wide range of religious materials infinitely more controversial than the Bible.[7]

In addition to violating the constitutional rights of Jail detainees, purging Ms. Williams' letters of scripture violates her own free speech rights. "The Supreme Court has clearly recognized a First Amendment interest in those who wish to communicate with prison inmates,"[8]

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[3] *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974); *see also Turner v. Safley*, 482 U.S. 78, 84 (1987) ("[P]rison walls do not form a barrier separating prison inmates from the protections of the Constitution.").

[4] *Procunier v. Martinez*, 416 U.S. 396, 428 (1974) (Marshall, J., concurring), *overruled in part on other grounds*, *Thornburgh*, 490 U.S. 401.

[5] U.S. Const., amend. I.

[6] *Turner*, 482 U.S. at 89 (standard for prisoner free speech claims); *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 349 (1987) (same standard applied to prisoner free exercise claims). The *Turner/O'Lone* standard applies to *convicted* prisoners, and even greater protections may apply to pre-trial detainees held in jails. *Bell v. Wolfish*, 441 U.S. 520, 545 (1979) ("[P]retrial detainees, who have not been convicted of any crimes, retain at least those constitutional rights that we have held are enjoyed by convicted prisoners.").

[7] *McCabe v. Arave*, 827 F.2d 634, 638 (9th Cir. 1987) ("[P]rison authorities have no legitimate penological interest in excluding religious books from the prison [chapel] library merely because they contain racist views. Courts have repeatedly held that prisons may not ban all religious literature that reflects racism."); *see also Williams v. Brimeyer*, 116 F.3d 351, 354 (8th Cir. 1997) (holding that prison violated prisoner's First Amendment rights by banning Church of Jesus Christ Christian publications that advocated racial separatism, affirming award of punitive damages, and stating, "[t]he incoming publications did not counsel violence, and there is no evidence that they have ever caused a disruption. Certainly the views expressed in the publications are racist and separatist, but religious literature may not be banned on that ground alone."); *Aikens v. Jenkins*, 534 F.2d 751, 756 (7th Cir. 1976) (holding prison regulation overbroad because "[t]he phrase 'material that seriously degrades race or religion' is not narrow enough to reach only that material which encourages violence") (citation omitted); *Nichols v. Nix*, 810 F. Supp. 1448, 1452-53 (S.D. Iowa 1993) (holding that prison violated prisoners' First Amendment rights by banning publications that did not advocate violence but did make a series of offensive and racist assertions), *aff'd*, No. 93-1490, 1994 WL 20653 (8th Cir. Jan. 28, 1994).

[8] *Montcalm Publ'g Corp. v. Beck*, 80 F.3d 105, 109 (4th Cir. 1996).

and the Constitution guarantees "free citizens" the right to "reach[ ] out to those on the 'inside.'"[9] Not only did the Jail censor Ms. Williams' letters, but Jail officials compounded the violation of Ms. Williams' constitutional rights by failing even to notify her of the censorship. The Supreme Court has held that "the decision to censor or withhold delivery of a particular letter [to a prisoner] must be accompanied by minimum procedural safeguards," including notice to the sender.[10]

The Jail's policies also violate the Religious Land Use and Institutionalized Persons Act ("RLUIPA"),[11] which provides even greater protection for prisoners' religious exercise than the First Amendment. In enacting RLUIPA, Congress found that "'frivolous or arbitrary' barriers impeded institutionalized persons' religious exercise," and heard testimony that religious texts such as "'the Bible, the Koran, the Talmud ... were frequently treated with contempt and were confiscated, damaged or discarded' by prison officials."[12] In response, Congress mandated that the government must not impose a substantial burden on a prisoner's religious exercise unless the burden is the least restrictive means of furthering a compelling governmental interest.[13] In this case, there is no conceivable interest in banning the Bible, much less a compelling one.

The explanations proffered for censoring Ms. Williams' letters only confirm the illegality of the Jail's actions. The Jail sometimes claimed to censor the letters because the letters contained "Internet Material," but courts have squarely rejected the argument that prisons and jails may ban correspondence merely because the sender printed material from the Internet.[14]

Even more troubling, the Jail used the notation "Religious Material Sent from Home" as a justification for censorship, meaning that the Jail censored material *precisely because* it was religious in nature. "At a minimum, the protections of the Free Exercise Clause pertain if the

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[9] *Thornburgh*, 490 U.S. at 407.

[10] *Procunier*, 416 U.S. at 417; *see also Montcalm Publ'g Corp.*, 80 F.3d at 109-10 (prison officials must provide notice to the sender and an opportunity to respond when they reject the sender's mail).

[11] 42 U.S.C. § 2000cc-1 *et seq.*

[12] *Cutter v. Wilkinson*, 544 U.S. 709, 716 & n.5 (2005) (quoting 146 Cong. Rec. 16698, 16699 (2000) (joint statement of Sen. Hatch and Sen. Kennedy on RLUIPA) & Hearing on Protecting Religious Freedom After *Boerne v. Flores* before the Subcommittee on the Constitution of the House Committee on the Judiciary, 105th Cong., 2d Sess., pt. 2, at 58-59 (1998) (prepared statement of Donald W. Brooks, Reverend, Diocese of Tulsa, Oklahoma)).

[13] 42 U.S.C. § 2000cc-1.

[14] *Clement v. California Dep't of Corr.*, 364 F.3d 1148, 1152 (9th Cir. 2004) ("Prohibiting all internet-generated mail is an arbitrary way to achieve a reduction in mail volume."); *Jackson v. Pollard*, No. 06-3000, 2006 WL 3154621, at *4 (7th Cir. Nov. 2, 2006) (prison failed to justify rule that banned responses to prisoners' web pages if the responses were printed email messages but allowed handwritten responses); *Canadian Coalition Against Death Penalty v. Ryan*, 269 F. Supp. 2d 1199, 1203 (D. Ariz. 2003) (prison rule banning prisoners from corresponding with internet service providers violates First Amendment).

law at issue discriminates against some or all religious beliefs...."[15] The principle that religious correspondence must not be saddled with restrictions inapplicable to non-religious correspondence is so settled in the law that prison and jail officials who impose such restrictions forfeit qualified immunity and become subject to suit in their personal capacities.[16]

In order to remedy the illegal practices described above, we request that you immediately:

- Guarantee in writing that the Rappahannock Regional Jail will not censor Biblical passages from letters written to detainees.

- Revise the Rappahannock Regional Jail written Inmate Mail Policy to state that letters will not be censored merely because they contain religious material.

- Revise the Rappahannock Regional Jail written Inmate Mail Policy to state that letters will not be censored merely because they contain material printed from the Internet or copied from the Internet and inserted into a letter using a word processor's "cut and paste" feature.

We look forward to hearing from you and hope that this matter can be resolved without resort to litigation.

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[15] *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993).

[16] *Bess v. Alameida*, No. 03-2498, 2007 WL 2481682, at *17 (E.D. Cal. Aug. 29, 2007) (denying qualified immunity where prison restrictions "applied solely to religious publications, distinguishing between religious publications and all other publications").

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